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## LIMITATION OF PRINCIPLE THAT A COURT WILL TAKE JURISDICTION OF THE INTERNAL AFFAIRS OF A FOREIGN CORPORATION.

In Corry v. Barre Granite and Quarry Co., et al., 101 Atl. 38, decided by Supreme Court of Vermont, there appears an interesting discussion of the principle that a court will not take jurisdiction of the internal affairs of a foreign corporation and of limitations upon the application of this principle.

Portions of the opinion herein excerpted sufficiently disclose the facts in the instant case for our use in this consideration.

The court said in this opinion, which was by a unanimous court, that: "The defendants invoke the rule that a court will not take jurisdiction of the internal affairs of a foreign corporation; and contend that the relief sought here would be an interference with the internal affairs of the defendant company. It is doubtless well settled that the general rule is as above stated; but there is some disagreement as to what constitutes the affairs thus designated and courts have had difficulty in formulating a rule to serve as a test in all cases, as will appear from an examination of the decisions. * * * Except in cases involving the exercise of visitorial powers, the question presented by applications for relief in cases of this character 'is not strictly one of jurisdiction, but rather of discretion in the exercise of juridiction.' The refusal to take jurisdiction is often put upon the ground of policy and expediency; on a want of power to enforce a decree rather than on a want of jurisdiction to make it."

It seems to us, that, at bottom, this question rests more on a figment of the law than on essential fact, and the figment is greatly displaced by statutes requiring the obtaining of permission to carry on business in another state. The effect of the granting of such permission, and, especially, the right to use it as obtained, contemplate a surrender by the corporation to another state of visitorial, as well as other, powers of control.

This does not involve any invasion by one state of the domestic policy of another. If the home state of the corporation creates a legal entity that may carry on business abroad and the foreign state is at full liberty to impose terms on this entity, both the home state and its creature are bound by the situation that results. That the Vermont court, in essential fact, subscribes to this principle would seem true as the next excerpt from the opinion implies.

That court said: "Irrespective of the test to be applied in determining what are the 'internal affairs' of a corporation, it may safely be said that when a corporation is non-resident only in that it is the creation of another state—its officers, agents, stockholders, business and property all being within the jurisdiction of the court—policy and expediency do not require the court to deny relief in a proper case on the ground that the internal affairs of the corporation will be affected. Where the relief sought is within the general jurisdiction of a court of chancery, and all the parties necessary to the full and proper adjustment of the rights involved are before the court, and where the relief sought does not require an exercise of the visitorial power of the government, the court should determine the controversy, instead of remitting suitors to a foreign jurisdiction."

There seem many things stated in this excerpt in the way of barring relief by a court of another state. As, however, the

court exercised jurisdiction in the instant case what is stated as having the force of a bar may be considered *arguendo* or *obiter* rather than essential.

For ourselves, we do not see why, if visitorial powers are necessary to be exercised for completer relief, directors, stockholders or creditors, resident or non-resident, for a sufficient reason might not be called into a foreign court. The principle of estoppel, if nothing else, ought to work out this result.

Estoppel is easily deduced so far as directors and stockholders are concerned. Either directly or mediately they are bound by the corporation's submission to the laws of another state. So far as creditors are concerned if they trust a corporation in an outside transaction, it is to their advantage that visitorial power be exercised and that jurisdiction be as general as may be required. If the transaction is as domestic as is the corporation, they either know or ought to inquire, if it does business abroad. At all events, they are presumed to know whether the domestic law permits such business.

Inquiry into this kind of a question pertains very specially to this country with its dual system of government. It scarcely could arise in England. It naturally had more exploitation or received more attention prior to the growth of statutes in states conditioning the transaction of business outside of the home states of corporations. Some of these statutes directly say that foreign corporations are subject to the same liabilities as are domestic corporations. All of them seem to us to imply this much. The figment our courts have evolved is subject to readjustment in our changing law. Then there will remain the rule that the first state court obtaining jurisdiction should be allowed to proceed uninterruptedly to the end.

## NOTES OF IMPORTANT DECISIONS.

COMMERCE — INJURY TO EMPLOYE LOADING CARS WITH SAND AND GRAVEL FOR REPAIR OF TRACK.—The policy in Workmen's Compensation Acts, as discussed by Justice Brandeis in his dissent in Railroad v. Winfield, 37 Sup. Ct. 546, referred to in 85 Cent. L. J. 37, and the narrow line between employes engaged and those not engaged in interstate commerce, come to mind in reading a late decision by Mississippi Supreme Court. Yazoo & M. V. R. Co. v. Houston, 75 So. 690.

This case shows that an employe of an interstate carrier was a day laborer engaged in loading cars with sand and gravel for the repair of its roadbed. In the course of his work he was buried by sand falling upon him and thus smothered to death. His representative brought suit under state law and a judgment in her favor was affirmed.

The Supreme Court said: "The appellant relies on Pedersen v. Railroad, 229 U. S. 146, 33 Sup. Ct. 648, 57 L. Ed. 1125, Ann. Cas. 1914C, 153, for a reversal of this case. The appellee stands behind Railroad v. Yurkonis, 238 U. S. 439, 35 Sup. Ct. 902, 59 L. Ed. 1397. It is insisted by appellee that all of the decisions of the Supreme Court since the decisions in the Pedersen and Yurkonis cases clearly indicate that the Supreme Court has intended to limit the influence of the Pedersen case rather than to extend it. Whether this be true or not is not for us to say, but since appellant stands squarely upon the Pedersen case, saying, 'If this case is sound, this case must be governed by the federal act,' we will examine the Pedersen case and its applicability to the present case. The gist of the Pedersen case, as interpreted by appellant's briefs, is that Pedersen was 'engaged in the repair of an interstate highway,' and for this reason he was 'employed in interstate commerce.' This analysis of the Pedersen case seems to be sound, but it seems to us that the Supreme Court of the United States, in the Yurkonis case drew in the lines somewhat, by holding that Yurkonis did not bring himself within the federal act. He was mining coal intended to be used in interstate commerce, but the manner of receiving the injury was too remote to justify the conclusion that he was employed in interstate commerce. A consideration of the facts developed upon the trial of the instant case, taken most favorably for appellant, indicate that the deceased was employed in mining gravel for the ultimate repairing or building

of the highway over which the interstate commerce of the railroad would be operated. Yurkonis was employed in mining coal to be used by the carrier to make steam power for the transportation of its commerce between the states, and yet the Supreme Court said:

"'The manner of the receiving of the injury by plaintiff showed conclusively that it did not occur in interstate commerce.

"May we not say the same about Mr. Houston?

"It seems to us that the character of the work and the manner in which the injury was received in the Yurkonis case and in the present case are strikingly similar. On the other hand, Pederson was working directly upon the highway, and received his injury by a train operated on the highway. So as we interpret the situation, this case is controlled by the principles of the Yurkonis case."

The difference between "tweedle-dum and tweedle-dee," or between "McCarthy, come out" and "Come out, McCarthy" has something of illustration in the cases the court cites. Whether the Pedersen case controls the hauling of sand for repair of a track instead of putting it under the rule in the Yurkonis case presents a very debatable question. Our inclination is to say that, if carrying a bolt for a bridge puts an employe in interstate commerce, then carrying gravel for a track does the same. But, why not mining coal for an interstate engine? At all events, why have such a mix-up when policy expressed in a Workmen's Compensation Act is weakened by taking citizens from under its influence? Repeal the Federal Employers' Liability Act.

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ANIMALS—INJURY FROM BITE OF MAD DOG.—In Legault v. Malacker, 163 N. W. 476, the Supreme Court of Wisconsin holds that, notwithstanding a statute making the owner of a dog responsible for any injury by it, yet, as it is not intended by such a statute to forbid the keeping of dogs, but only as they manifest symptoms of danger to others, an owner of a dog that was afflicted with rabies is not responsible for his biting another, where the dog suddenly became thus afflicted.

This conclusion seems correct, but as matter of fact the question has come before the court very infrequently. The opinion cites only one case and that was affirmed by an evenly divided court and the instant case is decided by a majority of four to three.

The dissent in the instant case says: "The statute abrogates the common law and does not make any exception. It was competent to make the law cover all cases, and if its language is given full effect, it does so." We think, however, it is more just to confine its application to vicious dogs, and thus give to ownership of this class of property a status equal to ownership of other property. Dogs are taxed and the keeping of them licensed, and, if any infirmity like rabies overtakes them, this would seem rather in the category of that which is within what may be called act of God.

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BANKS AND BANKING—OBLIGATION OF NON-RESIDENT DIRECTOR MEASURED BY HIS OATH.—Ninth Circuit Court of Appeals, holds that where one takes office as director of a national bank and executes the statutory oath that he will "diligently and honestly administer the affairs of such association and will not knowingly violate or willingly permit to be violated any of the provisions of this title," he will be held liable for losses arising out of the managing officers permitting overdrafts by parties beyond the tenth part of a bank's capital stock, the director being a non-resident of the city where the bank is located and paying no attention to its affairs. McCormick v. King, 241 Fed. 737.

The court said: "The fact that Mr. Bowerman lived 200 miles away is not an excuse for him. He lived that distance from Salmon when he voluntarily accepted the directorship and to exonerate him from neglecting to attend a meeting of the board or inquiring into the conduct of the institution would be practically to hold that there was no meaning and significance whatever to the oath he took that he would, so far as the duty devolved upon him, honestly and diligently administer the affairs of the association. No one would contend that a director must look into details of management, or keep closely in touch with routine matters, or know intimately to whom credits are given; but he is responsible for the exercise of supervisory control, and must be held to know something of the more important concerns of the association and his duty in these respects is not lessened by the fact that to do this duty means some personal inconvenience. If continued omission to give any attention could excuse, then the greater the inattention of a director to his duties, the less the liability he would incur."

While the conclusion was right in this case, we find some fault with the latitude of rule that might excuse. The common law duty in this case would seem sufficient to hold this

director and the statute does not appear to abate from that.

The court also says: "The interest of persons who have given their money to the custody of the bank, relying upon the belief that the directors, being men of integrity and business capacity, would at least make some effort to see that those in charge of the affairs of the institution would keep within the statutes and by-laws."

Here again the statement is rather broad. Those in charge are, or should be, bonded officers. They have to make reports to the comptroller when called for. If they are trusted in any particular it is the directors who trust them—not the stockholders or depositors. The slightest infraction of rules, statutory or otherwise, ought to earn dismissal from their positions or directors should shoulder the consequences Frequently decision attempts to draw a line between managers of corporations and trustees and at the same time oaths committing to trustee responsibility are required for induction into office.

## RESPECT FOR LAW FUNDAMENTAL IN A DEMOCRACY.

"Every day it is becoming more apparent that if this republic is to endure, something must be done to inspire a higher regard for law and for lawful authority. Thinking men and women realize that liberty depends upon law and that without law and respect for the law there can be no liberty."

With these words Judge Martin J. Wade opened his address before the meeting of the Iowa Bar Association at Council Bluffs, June 27, 1917.

Judge Wade is not the first or only public official whose experience has induced them to sound a word of warning. Only a few days ago in the United States Senate, Senator Sherman of Illinois, attributed the East St. Louis massacre to lack of respect for law and public authority. But Judge Wade's address is so earnest, so devoid of mere pleasantries, so full of homely illustrations, so rich in suggestion, that we are sure a few quotations therefrom will be read with interest:

"A few months ago," said Judge Wade, "I was riding in a car in a neighboring city. Two men, evidently from the middle walk of life, were sitting behind me, and I could not help hearing the following conversation: "'Well, I see they arrested Bill for stealing a couple of hams;' to which his companion responded: 'Yes, and I suppose he will go to prison; if he was a rich guy, there wouldn't be any danger, but a poor devil don't stand no show in the courts.'

"The other agreed with him, and they proceeded to discuss the subject and to 'cuss' the courts. I wanted to turn to explain to them that the statement we often hear quoted: If a man steals a loaf, he goes to prison, and if he steals a railroad he goes to the United States Senate,' is a gross exaggeration—nay, a positive libel upon our institutions.

"I wanted to say to them: 'Go down to the police court of your own city, and you will find that the arrests for minor offenses for the past year have averaged some forty-five each day; and then go to the records and find that in 90 per cent of the cases, the courts and the law have permitted the unfortunates to keep out of prison by the imposition of a nominal fine, or the favor of a suspended sentence. I wanted to tell them that as a matter of fact out of the thousands of cases tried every day in this country that only in a very small per cent (I would say less than 1 per cent) substantial justice is not administered.

"'I wanted to cry out in protest against the source from which the mis-information comes, which is conveying this dangerous idea to the American people—the yellow newspapers and magazines, and other purveyors of falsehood and scandal.

"'I recognized in the expressions of the men on the car a deep-seated and dangerous condition of the public mind. Gloss it over as we will, we know that a large and growing percentage of our people have no confidence in the law or in the courts; and they are not limited to what we call our uneducated classes, either. It is nothing unusual to hear men prominent in business, give utterance to expressions which indicate at least a doubt, lingering somewhere back in the mind, as to whether or not the courts are on the square.'"

If it is the duty of every lawyer to uphold the honor and integrity of the courts, this burden should not be left to the

judges themselves. If every lawyer felt as intensely as does Judge Wade about the false and despicable attacks now so frequently made upon the courts, judges themselves would not be compelled so often to come out on the huskings to defend their office. Too often lawyers by their silence lend credence to these attacks. For this reason, it seems to the writer, lawyers should assume much of the responsibility for the present lack of public confidence in the courts which are due in no small part to their failure to resist and resent the first false reflections cast upon the judicial office. But amends can be and should be made by every lawyer for past misprisions by increased diligence and earnestness in correcting the false impressions now so generally held by the ignorant and uninformed.

It is with respect of the ignorance of American institutions of justice that Judge Wade attributes much of the success of the campaign of slander on the courts. He pleads, therefore, for a wider dissemination of the principles of American law, constitutional and civil, the source of our laws, customs and institutions and the wonderful growth and adaptation of these principles to the changes made in the rapid progress of modern society. On this point Judge Wade said:

"Is it too much to ask that American citizens, when they reach the estate of manhood and womanhood, shall have at least a general knowledge of the details of the government of their country? That they should understand that this 'is a government of laws and not of men;' that in this nation we have no such thing as government except as it exists in the law of the land. That they should know something of this law; not that they be lawyers, but that they should know sufficient of the law to inspire a respect for the law, to guard them against the danger of unwittingly violating the law, and to enable them to discern the danger point in business transactions where they should hesitate to depend upon their own judgment, and seek competent legal advice.

"Should they not know something of the constitution of the United States and its source of power, and it binding nature, and its supreme place as a fundamental law of the land?

"But above all, and most important of all, should they not know—not only know, but feel the source of the law—the necessity for law—the power of the law—the justice of the law—the mercy of the law; yea, the kindness of the law in dealing with the frailities of humanity; and should they not, as they start out on life's highway, clothed with the responsibility of citzenship, know —nay feel, that there is not a law in force in a state or in the nation which the people cannot change within constitutional limitations; and also that there is not a constitutional limitation which cannot be modified by the people if they so desire."

Judge Wade's suggestion seems at first to startle him and he stops to justify himself in holding to it by repeating again the suggestion in question form. He says:

"Am I demanding too much? Should the average man and woman not know something of the protection which the law gives to the poorest of God's creatures by penalties imposed upon the wrongdoer for the violation of the criminal laws; how earnestly the home is protected; how effectually the hand of the murderer is stayed; how carefully the rights of property are guarded against the criminal or the trespasser?

"Should they not feel what a dignity is conferred upon the humblest whose cottage is his castle, sacred under constitutional guarantees from invasion, even from unwarranted search or seizure?

"Should they not realize (what is too little realized), in what a splendid spirit of sympathy with the misfortunes and weaknesses of men, even though they be self-invited, the law deals with their transgressions? How the law as a rule exempts the homstead from seizure for debt, and even preserves to the family its household goods, wearing apparel, and reasonable food and immediate earnings, and the usual tools with which the head of the family earns his living, all guarded against attachment or execution at the hands of creditors.

"Is it not well, especially for those inclined to criticise our civilization and our government, that they be reminded that the debtor's jail is closed, and that misfortune and poverty is no longer a crime?

"What a pity it is that Wilkins Micawber could not have lived in this age and in this nation where he could let his creditors walk the floor while he enjoyed life with Mrs. Micawber and the twins, peacefully waiting for something to 'turn up.'"

Gaining confidence in the practicability of his suggestion, Judge Wade insists that the study of American law and judicial institutions be made a part of the common grammar school curriculum, the "university" of nine-tenths of the American people, as well as of high schools and colleges. Here Judge Wade properly observes:

"Perhaps you will say that they will get some of this—much of this, in present courses in political science—sociology, history, and government, as presented in these later days in the universities. As to this, I make two observations. First, that it is not sufficient that those who are enabled to take a course in a university, shall have this knowledge. The great majority never enter a university. General Booth used to speak of the Salvation Army as intended for the 'submerged tenth.' I appeal for an opportunity for knowledge of the law for the submerged nine-tenths, the majority of whom never get through the high school.

"It is in the ranks of the poorly educated, and uneducated, the ranks of those who struggle for a livelihood that discontent and doubt, and the spirit of rebellion is developed. Here is the fertile field for the agitator, the radical socialist—the I. W. W., and other teachers of anarchy, who cry out 'Down with the law;' 'The courts are corrupt;' 'The courts are owned by the rich;' 'The poor are slaves;' 'The rich are our masters;' 'The government is owned by the plutocrats,' etc."

The course of study in law and government is then set forth by Judge Wade with such remarkable attention to detail and regard for the very ? of the instruction thus to be given that one is led to believe that the learned judge has been burning the midnight oil in his earnest attempt to find a solution for a problem which he believes demands an immediate attempt at solution. We have not the space to set forth or dwell at length on the details of Judge Wade's plan, which the writer thoroughly approves, but shall be content to close this brief review of Judge Wade's unusual address by quoting his own summing up of the character of the instruction in law and government which should be afforded the American youth of the future. Judge Wade said:

"I would teach the origin of property rights—the sacredness of the principle of private ownership. I would try to dispel the notion which creeps early into life, that only the sharper who is allowed to evade the law, can succeed in life's battle.

"I would show what a high place labor holds under the law, by pointing out the many provisions for protecting the laborer, by liens for his wages, and by preference of claims for wages, and by exemption of his earnings from attachment or execution.

"I would try to have the children learn the simplicity and universality of contractional relations and the duty under the law of faithfully living up to every obligation. I would emphasize the fact that the obligation of obedience to parents, teacher, guardian, city, state and nation, is not only a moral, but also a legal duty. I would teach the fundamentals of criminal law, showing how every offense invites a penalty, and how closely the law prohibiting crimes and offenses, conforms to the moral rules which men should obey without fear of punishment.

"And then I would have them understand how in social organizations, we must all yield something of what is termed our natural freedom of action, for general good, and for the promotion of harmony in community life.

"I would have them understand how far humanity has traveled from the days when under the Mosaic law, recognition was given to the principle of private vengeance —when an eye for an eye, a tooth for a tooth, a life for a life, were given legal sanction.

"I would have them realize what they owe to a civilization which has advanced in the settlement of controversies between men, from the wager of battle—the ordeal of fire and water, and hot iron, to the calm, peaceful proceedings before a court of justice which makes no show of power, but

which finds its bulwark in the eternal principles of justice and righteousness.

"I would have them learn to look at the law from the standpoint of its protection and security, rather than from the standpoint of its restraints and its penalties.

"But beyond all this, and above all this, I would make dominant the necessity for faith and confidence in the law, and in those who occupy place of responsibility in the making of the law, and in the enforcement of law. I would try to develop a spirit of submission to law—a spirit which even when the reasons for the law were not understood would yield willing obedience because it was the law. I would try to develop a spirit of submission to all lawful authority—the highest form of patriotism. I would try to strip the mystery from the law, and impress the fact of its inherent justice, and through it all, I would make a strong appeal to love of country, and the duty of loyalty to country—to confidence in its righteousness, and its intense regard for human liberty, and I would invest the whole course of instruction with the great truth, that we have the greatest, most powerful—the freest, the gentlest, and the most humane nation in the world."

It is unnecessary to add that Judge Wade's suggestion has our hearty and enthusiastic support. We feel lawyers have been too modest in pressing the claims of the law upon the consideration and attention of the great body of citizens. Physicians have coined the phrase "preventive medicine" and under that device have added the subject of "physiology" and "first aid to the injured" to the course of grammar school instruction. Surely it can be affirmed that next to a knowledge of God and their own body a child should know something about the government and the laws under which he lives and enjoys protection.

It is not improbable that a definite and feasible plan adopted promptly and pressed vigorously may arrest in the next generation the calamity of a class struggle or what is far worse, the disintegration of the greatest of world democracies on the rock of disrespect for law and lawful authority.

A. H. ROBBINS.

St. Louis, Mo.

## BRITISH WORKMEN'S COMPENSATION LAW.

In former articles[1] the benefits from this act and the procedure required in order to obtain these benefits have been summarized. We now come to the most important provision of the statute which is, "if in any employment personal injury by accident arising out of and in course of the employment is caused to a workman the employer shall, subject as hereinafter mentioned, be liable to pay compensation in accordance with the schedule to this act." It is around this clause of the act that the bulk of an immense litigation has arisen.

What is an accident? It has been laid down that the word accident must be interpreted in the popular and ordinary sense of the word as denoting an unlooked for mishap. Then there is the distinction between disease and accident. It was thought that an accident in the sense of the statute must be a fortuitous occurrence, but that test has been declared by the House of Lords to be unwarranted. Where the line is to be drawn between disease and accident is always a question of circumstances, but, generally speaking, the balance of the decisions in this respect are in favor of the workman, and indeed a dictum of one of our judges that "if a workman in the reasonable performance of his duty sustains a physiological injury as a result of the work in which he is engaged, that is accidental injury in the sense of the statute" was expressly approved by the House of Lords.

One or two illustrations will show how this doctrine has been applied in practice. Exertion in the ordinary course of work causing rupture, cerebral hemorrhage, pneumonia following a chill contracted by standing in icy water at the bottom of

(1) Previous articles will be found in 84 Cent. L. J. 302, 398; 85 Central L. J. 4.

(2) Trim Joint District School Board, 1914, 25 T. L. R. 452.

a mine, anthrax, tetanus as the result of a wound in the workman's foot caused by a nail, etc., all have been held to be accidents in the sense of the statute.

Questions have also arisen as to whether any given event popularly described as an accident could be said to be an accident connected with the employment, or whether it was only a risk common to all members of the public, e. g., lightning strokes. It has been held that in certain circumstances murder by a robber was an accident, also criminal assault by poachers was found to be accidental in the sense of the statute. The most recent and the principal of these cases is that decided by the House of Lords[2] who decided by a bare majority that an industrial schoolmaster who was assaulted by the boys in pursuance of a pre-arranged plan and died from his injuries had been injured by accident. In this case, too, it may be mentioned that a decision of one of the lower courts where a different view had been taken in a case where injury was caused to a workman during an attack on the works by strikers was overruled.

In connection with the point as to what constitutes an accident, it will be in place here to describe the application of the act to what it terms industrial diseases. Under the early Workmen's Compensation legislation diseases gradually produced as a natural result of being engaged in a particular employment did not ground any claim for compensation, but now there is scheduled to the present statute a list of industrial diseases the contraction of which entitles workers in certain processes to get compensation. Workmen contracting other industrial diseases cannot obtain compensation. They must show that their injuries have been accidental in the sense of the statute and according to the principles above explained.

DONALD MACKAY.

Glasgow, Scotland.

## BILLS AND NOTES—NEGOTIABILITY.

### COOLIDGE & McCLAINE v. SALTMARSH et al.

165 Pac. 508.

Supreme Court of Washington. June 4, 1917.

Under Rem. Code 1915, § 3392, providing negotiable instruments must contain unconditional promise to pay a sum certain, a note agreeing to pay any taxes assessed upon the note or its mortgage security is not negotiable, although no tax was actually imposed upon either note or mortgage.

PER CURIAM. The plaintiff, Coolidge & McClaine, a corporation, as holder of a promissory note and mortgage executed by Robert S. Saltmarsh and Margaret Saltmarsh, brought an action against them to foreclose the same, making a party defendant also, William McCowat, who held a subsequent mortgage covering the same land. The court rendered decree foreclosing the Coolidge & McClaine mortgage. On issues raised between the Saltmarshes and McCowat on the latter's note and mortgage which he held by transfer from the original payee, the court held that the note was a non-negotiable one and therefor subject in the hands of McCowat as assignee, to all the defenses which the makers had against the original payee. The defendant, McCowat, appeals.

The attorneys for both appellant and respondents agree that the only issue in the case is the negotiability of the note, it having been established that it was procured by fraud on the part of D. Ryrie, the original payee, from whom it had been purchased by appellant.

The promissory note, given by Saltmarsh and wife to Ryrie and transferred by him to McCowat, is as follows:

"2,400.00. Coulee City, Wash., Feb. 25, 1911.

"On the first day of January A. D. 1916, I promise to pay to the order of D. Ryrie, Spokane Washington, the sum of twenty-four hundred and no-100 dollars, United States gold coin of the present standard of weight and fineness, payable at Spokane, Wash., with interest thereon, in like coin, after maturity, until paid, at the rate of eight per cent. per annum.

And in case suit or action is instituted to collect this note or any part thereof, I promise to pay in addition to the costs and disbursements provided by statute such sum as the court may adjudge reasonable as attorney's fees in such suit or action, and to pay, in each year, on or before ten days before the same become delinquent, at said office, the taxes assessed in the state of Washington, upon the mortgage given to secure this note and the debt thereby secured, or upon this note or any part thereof. This note is given for the principal on an actual loan of twenty-four hundred and no-100 dollars, United States gold coin, and is secured by a mortgage on real estate of even date herewith.

"I contract and agree, that if the mortgaged property shall not, in the event of a foreclosure sale thereof, realize sufficient to pay in full the sum due under said mortgage, together with costs and expenses of foreclosure action, a deficiency judgment shall be rendered for any unpaid balance, which I promise to pay.

"No. of Note —— Robert S. Saltmarsh.
"Loan No. 728. Margaret Saltmarsh.

The Negotiable Instruments Act (Rem. Code, § 3392) declares that an instrument "must contain an unconditional promise or order to pay a sum certain in money" in order to be negotiable. The note in question, in addition to being for a sum named, also contains a promise to pay any taxes assessed upon the note or upon the mortgage securing it. We held, in Bright v. Offield, 81 Wash. 442, 143 Pac. 159, that such a provision in the note renders it non-negotiable. In that case there was involved a provision in the note for payment of taxes, which constituted an implied rather than a direct promise by the maker to pay them. The court there said:

"Since the amount of these taxes, rates, and assessments is uncertain, the amount of recovery would be uncertain. This provision, therefore, renders the note not merely an unconditional promise to pay a sum certain, but also, in necessary effect, a conditional promise to pay an uncertain sum."

The fact, as urged by appellant, that there was no law in force in this state for the taxation of notes and mortgages, would not detract from the effect of the rule. There always remains a possibility during the life of such contracts that they may be subjected to the liability of taxation, and a promise in the note to pay any taxes thereon would leave the amount to be paid indeterminate and open to conjecture upon the contingency of future legislation. See Carmody v. Crane, 110 Mich. 508, 68 N. W. 268; Walker v. Thompson, 108 Mich. 686, 66 N. W. 584; Smith v. Myers, 207 Ill. 126, 69 N. E. 858; Farquhar v. Fidelity Ins., etc., Co., Fed. Cas. No. 4,676.

The finding and conclusion of the court as to the non-negotiable character of the note in controversy is in accord with the case cited, and, as the case is controlling, the judgment will stand affirmed.

NOTE.—*Construing Note and Mortgage as Single Instrument to Determine Negotiability of Former.*—There seems little, if any, diversity of opinion as to the particular question before the court in the instant case. There is, however, some conflict of view on the question whether, if a note shows on its face that it is secured by mortgage, its negotiability is affected by a provision in a mortgage which, if appearing on the face of the note, would render it non-negotiable.

In Page v. Ford, 68 Or. 450, 131 Pac. 1013, 47 L. R. A. (N. S.) 247, Ann. Cas. 1915A, 748, where it was held that the insertion in the mortgage of a provision that mortgagor should pay all taxes did not render the note it secured non-negotiable notwithstanding it and the mortgage were executed at the same time. On the margin of the note it was recited that: "This note is secured by a mortgage of even date given to secure the balance of the purchase price of the property described in said mortgage."

Hough, J., in a dissenting opinion in Noell v. Gaines, 68 Mo. 649, says as to the rule of construing note and mortgage as one instrument that: "The rule that two instruments executed at the same time are to be read together was never intended to be so applied as to make a negotiable promissory note and a mortgage contemporaneously or subsequently executed to secure its payment as much one instrument as if they were one in form. The rule relates to an entirely different class of cases. A note and a mortgage do not constitute a single contract. They are separate instruments executed for different purposes and differ in nature. * * If the holder of a negotiable note secured by a mortgage chooses to disregard or abandon the mortgage security he may do so, and the note will then be enforced according to its terms and the law of negotiable paper. If the note and the mortgage are but one instrument the note will lose its character as a promissory note and become an ordinary contract merely."

In Garnett v. Meyers, 65 Neb. 280, 91 N. W. 400, there was a memorandum on the face of a note referring to mortgage securing it. The mortgage contained a provision that mortgagor was to pay the taxes. The court answered the claim that the two were one instrument by saying: "This is true but in an action at law upon the note and without seeking to enforce the security, the plaintiff might allege that in a writing executed with the note and as a part of the same transaction, it was agreed that the maker of the note should pay

the taxes that might be assessed and had been paid by the noteholder; and there is no doubt that such taxes so paid might in such action be included in the recovery." But this does not say, that he would have to so allege.

The Page case, *supra*, commenting on this reasoning, says such cases "assume that when parties sit down and execute a promissory note negotiable in its terms and secure it by a mortgage, they intend as a matter of law to do a thing that as a matter of fact they never thought of doing, namely to make a non-negotiable note."

But a reference in a note to a mortgage can be so full as to make the latter squarely a part of the note. Thus in Hull v. Angus, 60 Or. 95, 118 Pac. 284, it was said: "This note is given as a part of the purchase price of real property, and is secured by mortgage of even date herewith, *and subject to all the terms and conditions of said mortgage.*" (Italics supplied.)

In Frost v. Fisher, 13 Colo. App. 322, 58 Pac. 872, it was said: "Upon its face the note is negotiable. It was made for an amount certain and was payable at a time certain. It might become payable before that time, but at that time it was in any event payable. It was therefore a negotiable promissory note. The expressed purpose of the trust deed was to secure the payment of this note and the interest notes attached to it." And as to the two instruments being one, that court said: "The general rule without doubt is that where two separate contracts are executed at the same time, affecting the same subject-matter, they are to be construed together as one contract. * * * But we do not think that the rule applies to a covenant which is inserted purely for the purpose of security and for the enforcement of which resort can be had only to the property mortgaged."

In Thorp v. Mindeman, 123 Wis. 149, 101 N. W. 417, 68 L. R. A. 146, 107 Am. St. R. 1003, it was said: "If all the agreements contained in every mortgage are as matter of law imparted into the note * * * the most simple real estate mortgage would deprive the note which it secures of its negotiable character, because it would impart into the note one or more collateral agreements which are not for the payment of money. Fortunately, it is not necessary to give so violent a shock to the understood principles of law governing the negotiability of notes and mortgages." Further along the opinion in this case says: "The rule that instruments are to be construed together does not lead to this result. Construing together simply means that, if there be any provisions in one instrument limiting, explaining, or otherwise affecting the provisions of another, they will be given effect as between the parties themselves and all persons charged with notice, so that the intent of the parties may be carried out, and that the whole agreement actually made may be effectuated. This does not mean that the provisions of one instrument are imported bodily into another. They may be intended to be separate instruments and to provide for entirely different things."

And we hardly think that a statement on the margin of the note carries obligation to look to the mortgage for any limitation against what the note in express terms provides—and when one looks he finds an instrument executed not for payment, but for security only, if it is desired to resort to it.

C.

## ITEMS OF PROFESSIONAL INTEREST.

### A LAWYER WHO HOLDS THE REINS IN RUSSIA.

True to the history of all democracies, a lawyer has been called to lead the ship of state in that new child of liberty, free Russia. Alexander Feodorovitch Kerensky is a young lawyer, still in his thirties, chosen by the Council of Workingmen and Soldiers, to be their representative in the coalition provisional government now controlling affairs in Russia.

Current Opinion, for June, quite vividly describes Kerensky's power as a lawyer and political leader. Our contemporary says:

"Kerensky, according to a study of him in the Humanité, which admires him because he is a staunch Socialist, is the greatest lawyer in Russia, despite his youth. He sits in the Duma for Saratoff, his character reflecting the local temperament with unusual fidelity. His home is part of a vast natural amphitheater in the Volga region, surrounded by hills, all well cultivated, the district represented by Kerensky being more heterogenous in its population than one expects to find a Russian constituency. The deputy for Saratoff is like his people in being an orator born. Every man in Saratoff is said to be a natural-born lawyer and politician and Kerensky happens to be the most gifted of them all. His pleadings in the local courts early assumed a theatrical character. He folds his arms and glares in the most disconcerting fashion imaginable at an opposing witness, at a judge who ventures to correct him, at a lawyer with whom he is battling. The transfer of that stare to the Duma has had the most prodigious effects. Kerensky, in the Duma, launches a torrent of words, swiftly, yet each distinct and telling. At the height of the deluge it ceases. He folds his arms and gazes about him in that tense, strained, alert fashion. A pin could be heard to fall. Then he fires his terrific shot—an epigram it may be or a charge of turpitude or a crushing citation of what Peter the Great said or what Pushkin said—and the sensation that ensues is immense. The last exhibition of the kind occurred as recently as last March, barely a week before the revolution. It was one of the parliamentary preludes of the revolution, says the Temps.

"In his capacity as orator, Kerensky is most at home, the French daily says, when the working classes hold one of their turbulent meetings at Petrograd or Moscow. One thinks of Marat. Kerensky has the same passion for the mob, for the unfed, for the sons of toil. His perfect sincerity has made him the idol of the labor unions or artels. Kerensky has risked imprisonment in resisting the favorite device

of the old bureaucracy—the drafting of workingmen and their exile to remote governments upon the plea of administrative necessity. Protopopoff, incarnation of bureaucracy, had secured a decree against Kerensky and dared not banish him. The man who hunted up Kerensky and tried to kill him on the eve of the abdication is said to have been in the pay of Protopopoff, to whom Kerensky referred as 'that vulture.' Kerensky has a wonderful vocabular of objurgation. He called Shcheglovitoff, his predecessor at the ministry of justice, a crocodile without tears. He called Goltizen a simperer and he said that Sturmer spoke Russian with a Hohenzollern accent. He coined the happy phrase that there are two kinds of democracy—the kind the people want and the kind the people get. Interrupted in the Duma by Godnef's remark that Socialism is a dream, Kerensky retorted, 'Yes, and capitalism is a nightmare.' It is this readiness of tongue which, among other things, enables the deputy from Saratoff to hold his own in that most turbulent of organizations in Petrograd, the council of workers' and soldiers' delegates, which is the supreme power in the state according to the Socialist press abroad, which made the great revolution."

## REPORT OF THE MEETINGS OF TWO GREAT BAR ASSOCIATIONS.

The present war is playing havoc with the programs of bar associations. It seems almost impossible in these troubled times to keep a speaker to his text or to confine him within the limits of some prosaic legal theme. In one way or another he always manages to escape from his limitations and get back to the subject uppermost in the mind of every citizen, to-wit, the war. He prefers to idealize and amplify ideas of liberty, sacrifice and national honor.

This was recently evidenced at the meetings of the Michigan and the Iowa Bar Associations. But besides having this element in common, it is worthy of note that both associations passed resolutions pledging their loyalty to the President of the United States, and, also adopted certain war resolutions which were suggested by Hon. George Sutherland, President of the American Bar Association, one of which was that attorneys pledge themselves to take care of the practice of lawyers who are compelled to give up their practice because of some war service in behalf of the national government.

*The Michigan Bar Association.*

The Michigan Bar Association met at Grand Rapids, June 29th and 30th. More than one hundred members were present, according to the report of our correspondent, and the meeting was very enthusiastic.

The principal speakers were Hon. Atlee Pomerene, U. S. Senator from Ohio; Hon. Thomas J. O'Brien, former Ambassador to Japan; Hon. Lawrence Maxwell, of Cincinnati, former Solicitor-General of the United States; Hon. Roger W. Butterfield, of Grand Rapids; and Prof. John R. Rood, of the University of Michigan. The president's address was delivered by Burritt Hamilton, of Battle Creek. The speakers could not refrain from adverting constantly to the state of war which exists. Mr. Butterfield declared that a new epoch in American history began in August, 1914, that the old period stopped in August, 1914. Mr. Butterfield said: "We are in a war for which we were not prepared. I don't mean prepared when it comes to money, armies, men and munitions. That might be true. But we were not prepared for the spirit of the thing. We knew nothing of this barbarism, ruthlessness, murder and cruelty, which we see about us. We were not prepared for it and only now are beginning to realize the spirit of the conflict. We are fighting for civilization, not that the rights of smaller states may live, not that our rights may be protected on the high seas, not because humanity has been ravished, but we are in this fight for the sake of civilization, the perpetuation of the principles for which humanity has stood for thousands of years."

Mr. Burritt Hamilton's address was ornate and patriotic. It was filled with fresh, pithy, up-to-date epigrams, for which we have space for only a few specimens:

"Out of the present cataclysm," said Mr. Hamilton, "emerges world democracy through which, under God, men shall no longer exist for states, but states shall exist for men.

"The flag symbolizes fair trial in the courts as truly as it represents heroic action on land and sea."

"Always at the end of the beaten path pioneer juridicial concepts struggle for existence."

"Suits brought in court must first be tried in the lawyer's office, and, in hundreds of his cases that never reach the courts, every lawyer must sit in final judgment."

"While force and arms shall 'make the world safe for democracy,' no influence save good laws wisely administered can keep democracy safe for the world."

Prof. Rood was the only speaker who talked law. He read a very admirable paper on reducing the cost of justice, and favored abolish-

ing the present jury system in civil cases, substituting a referee, whose findings would be formally reported to the court.

The election of new officers resulted in the re-election of Burritt Hamilton, of Battle Creek, as president of the association; Harry A. Silsbee, of Lansing, as secretary; and William E. Brown, of Lapeer, as treasurer.

*The Iowa Bar Association.*

The Iowa Bar Association met at Council Bluffs, June 28th and 29th. President William McNett, of Ottumwa, presided, but failed to deliver his address, deferring it from day to day until the time grew too short and it was omitted with the understanding that it would be printed in the annual report.

The principal address was delivered by Federal Judge Martin J. Wade, of Iowa City. His subject was "Education and Americanism," and he advocated a course of education on constitutional law, legal history and the fundamental principles of the law in the public schools in order that our citizens may have the correct idea of the importance and majesty of the law. He said that he thought the knowledge of our relations with each other and to our government would be "more useful to our children twenty years from now than will be knowledge of the anatomy of a frog's hind leg."

Dean D. O. McGovney, of the Iowa University, read an exhaustive paper on "The Webb-Kenyon Law, and Beyond," in which he analyzed from a constitutional standpoint the trend of decisions on various phases of the liquor traffic. He specially discussed the recent bone dry law, which he said was bound to raise the question as to the constitutional right of a man to drink in moderation by himself. Two lines of decisions were developed, one the Kentucky law, which holds that the right of the individual drinker is not affected by such legislation, while the Idaho decisions tend the other way.

There was considerable discussion of matters of reform, and one debate was very animated: this was over the proposal to shorten trials by means of simplified pleadings. In certain classes of cases under existing laws in Iowa, in case a general denial is entered by defendant to petition filed against him, it is necessary for plaintiff to bring in testimony to prove each and every point that is alleged. The committee presented a proposal providing for an examination, if need be, of both plaintiff and defendant to a suit, in advance of the actual trial, by which it could be ascertained to just what extent both sides agree as to the facts. It was argued that in many cases this would enormously curtail the field of facts to be proved by one side or disproved by the other. The proposal was lost by a vote of 24 to 47, but by unanimous consent was referred to the committee, to be reported again at the next meeting of the association, which will be held at Des Moines, June 27th and 28th, 1918.

The new officers are: President, Chas. W. Mullan, Waterloo; Vice-President, Henry L. Adams, Des Moines; Secretary, H. C. Horack, Iowa City; Treasurer, Leonard T. Carney, Marshalltown.

## BAR ASSOCIATION MEETINGS FOR 1917—WHEN AND WHERE TO BE HELD.

American—Saratoga Springs, N. Y., September 4, 5 and 6.

California—Santa Barbara, Cal., September 27, 28 and 29.

Hawaii—Honolulu, Wednesday, August 29.

Minnesota—Minneapolis, August 7, 8 and 9.

Missouri—Kansas City, Mo., September 27, 28 and 29.

New Mexico—Roswell, sometime in October.

North Dakota—Dickinson, August 16 and 17.

Rhode Island—December 5.

South Carolina—Greenville, August 3 and 4.

Tennessee—Epperson Springs, August 30 and 31.

Utah—Wednesday, August 15.

## BOOK REVIEW

### ELIHU ROOT'S ADDRESSES ON GOVERNMENT AND CITIZENSHIP.

This is a collection of addresses of one of our most famous Americans, edited by Mr. Robert Bacon and Mr. James Brown Scott.

The editors advise that the addresses and speeches of Mr. Root, which appear in this volume are not arranged chronologically, but are classified so that each of the several volumes will contain those which relate to a general subject and a common purpose. The chapters in this volume relate to the citizen's part in government, those before New York State Constitutional Conventions of 1894 and 1915, those on Government and those on the Administration of Government. The clear and precise use of terms in all of these addresses, and the lofty views of a patriotic, large-minded, statesman and lawyer, is such as is to be expected from a man like Mr. Root and the editors render a distinct service to their country, to his-

tory and to literary achievement by the collection made, and the order chosen therefor.

This volume is in excellent typographical form, and is published by Harvard University Press, 1916.

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### UNITED STATES STATUTES ANNOTATED —10 VOLS.

Already there have been issued four of the ten volumes, the UNITED STATES STATUTES ANNOTATED, and the remaining volumes of the set, we are advised, will follow rapidly.

The publishers claim that they present in the full set an annotated compilation of all the statute laws of the United States of public and general character, as those statutes exist at the present time.

The Annotation embraces not only federal decision, but also opinions by the attorney-general, rulings and decisions of executive departments and, where helpful, decisions of state courts.

To the various titles are appended rules of practice by the courts and the executive departments of the government.

The titles follow the arangement in the Revised Statutes, and where amendments have been made, sections appear as last amended, and where repeals occur, suspended sections are accounted for.

Volume 1 of these statutes is called "Judiciary," and therein is found the judicial code as governing District Courts, Courts of Appeals, the Court of Claims, the Commerce Court, the Supreme Court, and the provisions common to the several courts. The annotation to the sections is extraordinarily full.

The other volumes of the four on our desk show equal painstaking and thoroughness. Especially are we impressed with Volume 3, which concerns interstate commerce. There the editors have especially exhibited their industry and acumen and given to the profession a wealth of annotation, amounting indeed to a wonderful commentary on our law on this subject. Each of the volumes will show on its back the titles it embraces, and each will have its separate index.

The editor-in-chief of this work is a Missouri lawyer and his able associates hail from that state and their industry and learning have a splendid setting in the work in the best style of the publishers' art, worthy of the well-known house of T. H. Flood & Co. Chicago. 1917.

## HUMOR OF THE LAW.

There is one thing in a lawyer's profession which is different from any other.

"What is that?"

"The longer he is at it the more he has of a brief career."—Baltimore American.

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A New York lawyer tells of a man who had been convicted of stealing by a certain "Down East" judge well-known for his tender-heartedness.

"Have you ever been sentenced to imprisonment?" asked the judge, not unkindly.

"Never!" exclaimed the prisoner, suddenly bursting into tears.

"Well, well don't cry, my man," said His Honor, consolingly, "you're going to be now."

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A celebrated engineer being examined at a trial, where both the judge and counsel tried in vain to browbeat him, made use of the expression in his evidence, "The creative power of a mechanic," on which the judge rather tartly asked him what he meant by "the creative power of a mechanic." "Why, my Lord," said the engineer, "I mean that power which enables a man to convert a horse's tail into a judges' wig."

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Pointing to the gifts of bonuses of $400,000,000 distributed by American employers during the holidays, Senator Tillman said to a correspondent:

"And they are trying to talk to us about coming hard times! They're trying to scare us!

"They're in the position of the chicken thief who said to his lawyer:

" 'Put me on the stand. Let me tell my own story. It'll be believed.'

" 'It'll carry conviction,' said the lawyer with a snort."—St. Louis Star.

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When Joseph H. Choate was ambassador to the Court of St. James he was standing near the door as some of the guests at a reception were leaving. An Englishman, mistaking him for one of the footmen, said:

"Call me Carriage."

Mr. Choate turned to him and said:

"How do you do, Carriage?"

"Why do you call me that?" demanded the astonished Englishman.

"Well," responded Mr. Choate, dryly, "I couldn't very well call you Hansom."—Rochester Evening Times.

## WEEKLY DIGEST

**Weekly Digest of ALL the Important Opinions of ALL the State and Territorial Courts of Last Resort and of ALL the Federal Courts.**

*Copy of Opinion in any case referred to in this digest may be procured by sending 25 cents to us or to the West Pub. Co. St. Paul, Minn.*



1. **Action**—Negligence.—Negligence on part of owners of automobiles, one of which, with bad lights ran ahead, the other of which followed to give it light, held of such concurrent character as would sustain recovery against both in single action for death of plaintiff's wife thrown out of buggy when struck by first car and run over by following car.—Daggy v. Miller, Ia., 162 N. W. 854.

2. **Adverse Possession**—Color of Title.—Conveyance of land as part of a lot in a southwest corner on the south side of a stream running across corner of lot is defective as color of title, unless there is extrinsic proof that at time of conveyance a stream traversed southwest corner.—Callaway v. Beauchamp, Ga., 92 S. E. 538.

3. **Animals**—Trespass.—An unlicensed dog is not a trespasser on a highway, and his owner may maintain an action for damages against owner of an automobile whose chauffeur willfully or negligently on a public highway runs down such dog.—Lacker v. Strauss, Mass., 116 N. E. 236.

4. **Associations**—Estoppel. — Defendants, in suit by farmers' union to be reinvested as trustee with title to stock claimed to have been fraudulently secured by defendants, could not be heard to question right or capacity of union, either as corporation or as charitable organization or association, to act as trustee, nor to maintain suit as complainant.—Teal v. Pleasant Grove Local Union No. 204, Farmers' Educational & Co-operative Union of America, Ala., 75 So. 335.

5. **Attorney and Client**—Admission to Practice.—An attorney of a sister state, who, in his application for admission to the bar, suppresses the fact that indictments had been found against him, one of which was still outstanding, is guilty of conduct tending to deceive the court, and his admission will be revoked.—In re Carpel, N. Y., 165 N. Y. S. 102.

6.——Burden of Proof.—In an action by a client to cancel a deed given to his attorney during the relation, it is not necessary to show imposition of fraud on client; the burden of proving fairness, adequacy, and equity of the transaction being upon attorney.—Warner v. Flack, Ill., 116 N. E. 197.

7.——Contingent Fee.—Contracts between attorney and client providing for contingent fees, when called in question by the client, will be sustained only to extent of securing to the attorney reasonable compensation.—Soper v. Bilder, N. J., 100 Atl. 858.

8.——Professional Ethics.—Plaintiff's attorney held not to have violated professional duties or legal ethics by filing answer on behalf of one defendant, where it was not adverse to plaintiff.—Outlaw v. National Council, Junior Order United American Mechanics, S. C., 92 S. E. 469.

9.——Stipulation.—In replevin action, in which requisition was set aside, held that defendant's attorney could not affect defendant's right by stipulation or agreement that property might remain with person with whom constable had left it.—Bills v. Baker, N. Y., 165 N. Y. S. 171.

10. **Bailment**—Conversion.—A bailee is liable for conversion, where he delivers an automobile, the subject of the bailment, to an unauthorized person, though he acted in a well founded belief that the tortious act was right, and exercised a high degree of care.—Doyle v. Peerless Motor Car Co. of New England, Mass., 116 N. E. 257.

11. **Bankruptcy** — Corporation. — Under Bankr. Act, § 2 (1), both court of district in which corporation was organized and that of district in which it had its principal place of business had jurisdiction to adjudicate the corporation bankrupt.—In re New Era Novelty Co., U. S. D. C., 241 Fed. 298.

12.——Inchoate Dower. — The bankruptcy court has jurisdiction under Bankr. Act § 2 (7), to determine the amount to which the wife of the bankrupt is entitled under her agreement for the release of her inchoate dower interest.—In re Dialogue, U. S. D. C., 241 Fed. 290.

13.——Jurisdiction.—The district court cannot, under Judicial Code, § 57, obtain jurisdictoin by substituted service over non-resident assignees in a suit by trustee in bankruptcy to set aside as a preference an assignment of a debt owing to bankrupt by a non-resident.—Murphy v. Ford Motor Co., U. S. D. C., 241 Fed. 134.

14.——New Promise.—Debtor's promise to pay existing debt after his adjudication in bankruptcy but before his discharge will not be im-

paired by his subsequent discharge, which relates back to the adjudication.—Bank of Elberton v. Vickery, Ga., 92 S. E. 547.

15.——Preference.—Where a chattel mortgage upon a stock of lumber of one who became bankrupt was not filed for record four months before the petition in bankruptcy was filed, and by agreement between the parties was withheld from record for the interest and protection of the mortgagor, the mortgage was void because within the preferential class prohibited by Bankr. Act, § 60.—Gray & Dudley Hardware Co. v. Guthrie, Ala., 75 So. 318.

16.——Preferred Claim.—A mortgagee, without objection, who permits the mortgaged property to be sold by a trustee in bankruptcy under a court order, is limited in his preferred claim to the proceeds of the sale, if he knew of the order for sale.—In re States Printing Co., U. S. C. C. A., 241 Fed. 245.

17. **Banks and Banking**—Clearing House.—Although clearing house rule provided for return of checks before 3 p. m., act of drawee bank in charging account of drawer with amount of check held payment, and entitled payee to proceeds, although charge was afterwards erased and check returned to bank presenting it before 3 p. m.—First Nat. Bank of Philadelphia, Pa., v. National Bank of New York, N. Y., 165 N. Y. S. 15.

18.——Debtor and Creditor.—A customer, who deposits checks or drafts on other banks with his bank, which gives him credit in his general account, subject to check, thereby transfers the title to the checks or drafts, and renders the bank his debtor to the amount thereof, in the absence of an agreement to the contrary.—Security Nat. Bank of Sioux City, Iowa, v. Old Nat. Bank of Battle Creek, Mich, U. S. C. C. A., 241 Fed. 1.

19.——Estoppel.—A bank, which honors or passes a check of a depositor, in the mistaken belief that his credit is larger than it in fact is, or in the hope or mistaken belief that checks which it has credited to his account will be paid, is estopped, as against the owner of the check, from revoking or avoiding such payment.—Security Nat. Bank of Sioux City, Iowa, v. Old Nat. Bank of Battle Creek, Mich., U. S. C. C. A., 241 Fed. 1.

20.——Notice.—Where president and director of bank, whose stock was pledged by stockholder to another bank, was active officer and agent of first bank, having duties to perform in respect to business of bank and performing them at least in part, notice to him of stockholder's pledge of stock was chargeable to bank.—Bank of Florala v. American Nat. Bank of Pensacola, Ala., 75 So. 310.

21.——Officers.—Where officers of a bank obtained a loan from another bank on their individual notes, and, at their request the proceeds were credited to their bank, which thereafter became insolvent, it was not liable on the notes.—Henderson v. National Bank of Tifton, Ga., 92 S. E. 525.

22. **Bills and Notes**—Indorsee.—Where secretary of a corporation without authority indorsed a check payable to corporation to a bank in a transaction in which he was personally interested, held that bank was not an indorsee in due course, as defined by Civ. Code, § 3123, or entitled to rights of such indorsee as enumerated by § 3124.—Palo Alto Mutual Building & Loan Ass'n v. First Nat. Bank, Cal., 164 Pac. 1124.

23. **Carriers of Goods**—Bill of Lading.—In an export bill of lading a clause relieving carrier from liability caused by strikes did not bar the carrier from charging tariff storage charges accrued because of strike preventing delivery.—Boston & M. R. R. v. Oceanic Steam Nav. Co., Mass., 116 N. E. 260.

24.——Commerce Act.—Any pecuniary inducement held out to shipper to procure his business over a particular railroad is or may be a rebate or concession, within the prohibition of the Interstate Commerce Acts.—Northern Central Ry. Co. v. United States, U. S. C. C. A., 241 Fed. 25.

25.——Prima Facie Liability.—Prima facie the consignor contracting with the carrier is liable for freight, and fact that the charges are not paid by him and are to be collected from consignee does not discharge the consignor from liability.—Pennsylvania R. Co. v. Townsend, N. J., 100 Atl. 855.

26. **Carriers of Passengers**—Burden of Proof.—In action by a passenger for injury from a sudden jerk of car, in which burden was on defendant to show absence of negligence on its part, it would not exonerate defendant to show merely that its track was in good condition, and that its equipment was in good order at station from which train started.—Gulf & S. I. R. Co. v. Meyers, Miss., 75 So. 244.

27. **Chattel Mortgages**—Delivery.—If party delivers notes and chattel mortgage to another for special purpose of having other indorse notes, there is no delivery to other for his own benefit, and party incurs no liability to such other.—Fox v. Fox, S. C., 92 S. E. 477.

28.——Subsequent Creditors. — A mortgage taken on a stock of goods with an understanding that the mortgagor is to continue in business in charge of the goods, necessarily disposing of them from time to time, is fraudulent and void as to present and subsequent creditors of the mortgagor.—Gray & Dudley Hardware Co. v. Guthrie, Ala., 75 So. 318.

29.——Tender.—A judgment for the property sued for may be rendered in trover in favor of one claiming title under a mortgagor and against a mortgagee in possession without a tender of the amount due on the mortgage; such recovery being subject to mortgagee's right of foreclosure.—Hudson v. Gunn, Ga., 92 S. E. 546.

30. **Commerce**—Carmack Amendment.—Carmack Amendment refers only to bills of lading, and does not apply to action by shipper under Act April 25, 1871, § 1 (Hurd's Rev. St. 1915-16, c. 114, § 118), requiring carriers to weigh shipments of grain in bulk and state weight on the receipts or bills of lading.—Shellabarger Elevator Co. v. Illinois Cent. R. Co., Ill., 116 N. E. 170.

31.——Intoxicating Liquors.—In view of the Webb-Kenyon Act, the inherent limitations on the territorial operation of state laws cannot

protect a carrier in accepting intoxicating liquors outside the state and unlawfully transporting same into Alabama.—State v. Southern Express Co., Ala., 75 So. 343.

32.——State Legislation.—City ordinance providing that no person should distribute circulars, placards, or advertising matter within city limits without permit from city clerk for fee of $25 was revenue measure, and not a police ordinance.—City of Pueblo v. Lukins, Colo., 164 Pac. 1164.

33. **Contracts**—Implied Promise. — Where plaintiff performed work for a contractor, that the building was constructed on defendant's land does not raise an independent implied promise of defendant to pay plaintiff for his services.—Conti v. Johnson, Vt., 100 Atl. 874.

34.——Public Policy.—A contract whereby a brother agreed to compensate attorneys for controlling or advising a sister, so as to prevent her from disinheriting him, was contrary to public policy, and void.—Warner v. Flack, Ill., 116 N. E. 197.

35.——Restraint of Trade.—An advertising contract to prepare and furnish premium catalogues in which certain articles should be listed, merely tending to prevent plaintiff from furnishing such catalogues and merchandise to certain parties in defendant's locality, was not in restraint of trade.—John Newton Porter Co. v. Kiewel Brewing Co., Minn., 162 N. W. 887.

36. **Corporations**—Proceeds.—A foreign corporation, maintaining in the state office, manager and agents, held to be "doing business within the state," warranting service of process on manager, as provided by Code Civ. Proc., § 432.—Swift v. Matthews Engineering Co., N. Y., 165 N. Y. Supp. 136.

37.——Ultra Vires.—Conceding that giving bond insuring building owner against filing of mechanic's liens was beyond the powers of a brick-making corporation which furnished brick to the contractor constructing the building, it could not escape liability on the bond on the ground that its act was ultra vires.—Hoosier Brick Co. v. Floyd County Bank, Ind., 116 N. E. 87.

38. **Damages**—Profits in Business.—Damages to business as such particularly when measured in terms of profits, are not recoverable in an action for personal injuries, where the business involves substantial investment of capital and the time and services of plaintiff's wife.—Singer v. Martin, Wash., 164 Pac. 1105.

39. **Death**—Survival of Action.—Under Injuries Act, §§ 1, 2, and Administration Act, § 123, where plaintiff in personal injury action dies before final judgment from some other cause other than the injuries for which damages is sought, the cause of action survives to the personal representative, but if plaintiff's death results from injuries for which damages are sought, the suit abates.—Wilcox v. International Harvester Co. of America, Ill., 116 N. E. 151.

40. **Deeds**—Fee Simple Title.—Where it appeared that a deed of settlement under which one of partitioners claimed provided that upon the death of the ancestor "the property shall vest absolutely in the children surviving," and that the trustees under the deed of settlement shall do whatever was necessary to perfect the title in the partitioner, the partitioner took an indefeasible, unconditional fee simple title.—Ryder v. Oates, N. C., 92 S. E. 508.

41. **Divorce**—Abandonment.—Where husband inflicted severe physical punishment on wife, she abandoned him of right when his employer forced him to leave place at which they both lived, wife continuing in employment, and such abandonment did not deprive her of her right to divorce husband's cruelty.—Stolz v. Stolz, Wash., 164 Pac. 920.

42.——Alimony.—Where motion to set aside allowance of temporary alimony was based on ground existing at its allowance, its dismissal on general demurrer is not error, unless novant shows that without lack of diligence he was ignorant of such grounds at the time of the allowance.—Scott v. Scott, Ga., 92 S. E. 519.

43.——Evidence.—Evidence that the wife left her husband nearly seven years before suit for divorce was brought and several times refused to return to him or communicate with him held to establish her willful desertion, justifying a divorce without further efforts being made by petitioner to secure her return.—Fry v. Fry, N. J., 100 Atl. 839.

44. **Wills**—Testamentary Capacity.—Extreme stinginess and other personal peculiarities and habits held not to constitute unsoundness of mind of testator.—In re Collins' Estate, Cal., 164 Pac. 1110.

45. **Easements**—Notice.—Where one has given notice of his intention to close a private way, but has not actually obstructed it, the statutory remedies for removing obstructions do not apply.—Nevels v. Golden, Ga., 92 S. E. 521.

46. **Electricity**—Negligence. — Electric railroad is not liable for burns to pedestrian coming in contact with loose wire which third person had attached to pole carrying current of the railway.—Romana v. Boston Elevated Ry. Co., Mass., 116 N. E. 218.

47.——Permit.—If land between house and electric wire pole was used by public as playground and for travel for 30 years, electric companies stringing wires on pole were charged with notice that persons might at any time be upon land with permission of owner.—Boutlier v. City of Malden, Mass., 116 N. E. 251.

48. **Eminent Domain**—Drainage.—The proceeding by which the state undertakes the establishment of drainage district is exercise of taxing power, and not power of eminent domain, except as to property actually taken or appropriated for ditches.—Chicago & N. W. Ry. Co. v. Board of Sup'rs of Hamilton County, Ia., 162 N. W. 868.

49. **Executors and Administrators**—Unadministered Assets.—Where wife was given legacy under will of which her husband was executor, which he appropriated to his own use, predeceased him, and he as her administrator failed to reimburse her estate, such legacy was an unadministered asset recoverable by her administrator de bonis non.—Morris v. Westerman, W. Va., 92 S. E. 567.

50. **Fraud**—False Representation.—Where the corporation failed to comply with Code Supp. 1913, § 1641b, as to procedure in issuing stock for property other than money, the offer of such stock for sale was a false representation that the shares had been legally issued, and that the amount thereof had been paid into the treasury.—Fish v. White, Ia., 162 N. W. 753.

52. **Frauds, Statute of** — Memorandum. — Where defendant wrote plaintiff referring to deed inclosed for execution as being in accordance with agreement, which deed described the property and set out the contract, held, there was a sufficient writing signed by defendant, though parol evidence was needed to identify the deed.—McLendon v. Ebbs, N. C., 92 S. E. 498.

53. **Game**—State Protection.—State has general right to protect wild animals, their preservation being matter of public interest, and no one can complain of incidental injuries that may result from such protection.—Barret v. State, N. Y., 116 N. E. 99, 220 N. Y. 423.

54. **Guaranty**—Contract.—Mere contract of the payee of a note to sell the machinery for which the note was given to a third person, and credit the sum paid by such person against the note, did not release the guarantor, where such contract was not complied with, and the sale was not in fact made to the third person.—International Harvester Co. of America v. Holmes, Wis., 162 N. W. 925.

55. **Habeas Corpus** — Remedy. — Writ of habeas corpus is proper remedy to secure release of prisoner declared insane in homicide case, where he has fully recovered his sanity, but the authorities charged with the duty have failed or refused to release him.—Swager v. Gillham, Ill., 116 N. E. 71.

56. **Homestead**—Husband and Wife.—Where a wife, after the husband's abandonment, remained in possession of their homestead, the husband's separate deed conveyed no interest to a purchaser, and he was liable to the wife for the use and possession of the homestead during the time she was compelled to be absent therefrom through fear.—Swingle v. Swingle, N. D., 162 N. W. 912.

57. **Hospitals**—Evidence.—In action against hospital and proprietor for death of patient who jumped out of window under influence of alcoholic delusions, whether physician or nurse should not have foreseen casualty and protected patient from unguarded window, held for jury.—Robertson v. Charles B. Towns Hospital, N. Y., 165 N. Y. S. 17.

58. **Husband and Wife**—Covenant.—A wife who joins in a deed of her husband's property is not liable on covenants contained therein where her only rights are the possibility of becoming entitled to dower and of inheriting personal property from her husband.—Warner v. Flack, Ill., 116 N. E. 197.

59.——Indignities.—Mere harsh words or threats of personal violence or mere intoxication are not sufficient to warrant decree of separation, but a combination of such actions persisted in for several years may be sufficient.—Eisenger v. Eisenger, N. J., 100 Atl. 840.

60. **Insurance**—Assessments.—Generally fraternal benefit society whose laws or contracts entered into by its members obligate them to conform to existing laws and regulations, and those that may thereafter be duly adopted, may raise assessments of members if increase is equitable and necessary to carry out purposes of organization.—Wagner v. Supreme Lodge, K. P., Ind., 116 N. E. 91.

61.——Estoppel.—Amount claimed in proof of loss will not preclude insured from showing a greater loss, where insurer has not been misled or induced to change its position by statements in the preliminary proof.—Boutross v. Palatine Ins. Co., Limited, of London, England, Kan., 164 Pac. 1069.

62.——Misrepresentation.—Contractor's statement in application for insurance of risks under Workmen's Compensation Act that he did not operate a "steam railroad switch or sidetrack," followed by the policy, was a material misrepresentation, where, unknown to insurer he used a "dinkey" steam locomotive on temporary tracks.—McCullough v. Georgia Casualty Co., Minn., 162 N. W. 894.

63.——Substantial Compliance.—In action by insured in policy of workmen's compensation insurance to recover amount of award paid, where land conveyed as part of award was of value equal to amount for which it was taken, held, that there was a substantial compliance, with requirement that loss be paid in money, and insured can recover full amount of award.—Komula v. General Accident Fire & Life Assur. Corp., Limited, of Perth, Scotland, Wis., 162 N. W. 919.

64. **Intoxicating Liquors**—Blind Tiger. — In prosecution for violation of a blind tiger ordinance evidence that defendant's wife was seen taking packages from his home to his place of business in the morning was neither irrelevant nor immaterial.—Vittilard v. City of Mason, Ga., 92 S. E. 554.

65.——Permit.—To "permit" unlawful use of intoxicants by proprietor of business implies his knowledge, consent and acquiescence.—Elliott v. State, Ariz., 164 Pac. 1179.

66. **Landlord and Tenant**—Damages.—Under Civ. Code, § 3300, plaintiff's loss from sacrifice of business at another location held not recoverable for defendants' breach of agreement to lease storeroom.—Schnierow v. Boutagy, Cal., 164 Pac. 1132.

67. **Mandamus**—Corporation.—Mandamus will issue at the state's suit to compel a corporation owning a dam to lower it to height authorized by law, where it is clearly shown that the dam is higher than is authorized.—State v. Kansas Flour Mills Co., Kan., 164 Pac. 1170.

68.——Idem Sonans.—Under Rem. Code 1915, § 3680, prohibiting secretary of state from filing incorporation articles of company whose name is similar to that of concern already doing business, and § 1014, authorizing mandamus to compel performance of act which law especially enjoins, a domestic corporation may mandamus secretary of state to strike from his records name of a foreign corporation having same name, and authorized to do business after relator.—State v. Howell, Wash., 164 Pac. 917.

69.——Pleading and Practice.—A petition for writ of mandamus, subscribed and sworn to by petitioner, was sufficiently signed, although his affidavit and signature appeared below signature of his counsel upon petition.—Swager v. Gillham, Ill., 116 N. E. 71.

70. **Master and Servant**—Accident.—Accident to employe, sent in a team to dig holes, from discharge of gun taken along by fellow servant for personal use, held not to arise out of his employment, within Workmen's Compensation Act.—Ward v. Industrial Acc. Commission of State of California, Cal., 164 Pac. 1123.

71.——Accident.—Where a railroad section repair hand was struck in the eye by a flying chip caused by peeling ties with a dull, nicked hatchet furnished by the employer, there is no liability, since the hatchet was a simple tool, the probable action of which must be equally familiar to mature men.—Karras v. Chicago & N. W. Ry. Co., Wis., 162 N. W. 923.

72.——Evidence.—The fact of defendant's ownership of an auto which struck a person on a street is prima facie evidence of her responsibility for the manner in which it was driven.—Potts v. Pardee, N. Y., 116 N. E. 78, 220 N. Y. 431.

73.——Factory.—A machine shop, operated by power in the basement of a rapid transit power house, held a "factory," within Labor Law, § 2, as amended by Laws 1915, c. 650, and § 8a, as added by Laws 1915, c. 648.—People v. Transit Development Co., N. Y., 165 N. Y. S. 114.

74.——Imputability.—Owner of automobile, riding in it when it was driven by his minor son, could not escape legal responsibility for a collision with buggy by proof that he took no part in driving or control of car.—Daggy v. Miller, Ia., 162 N. W. 854.

75.——Minimizing Damages. — A workman, partially or totally incapacitated, is not to be denied compensation on account of obtaining work even more remunerative, which he has the physical capacity to perform.—Sauvain v. Battelle, Kan., 164 Pac. 1086.

76.——Workmen's Compensation Act. — The chauffeur of a limousine, hired by one undertaker to another to carry passengers to a funeral conducted by the latter, is not entitled to compensation for injuries under Workmen's Compensation Act, his master not being engaged in carriage by land, or one of the occupations

termed extra-hazardous by § 3, par. "b," cl. 3; and hence the Industrial Board has no jurisdiction to make an award.—F. W. Hochspeier, Inc., v. Industrial Board of Illinois, Ill., 116 N. E. 121.

77.——Workmen's Compensation Act.—Injury to traveling salesman by slipping on ice while going from place where he transacted business to an electric car line, though received in the course of hs employment, held not to arise out of such employment.—Donahue v. Maryland Casualty Co., Mass., 116 N. E. 226.

78. **Mortgages**—Interest.—A trust deed given in place of a mortgage and in release thereof properly included an amount of interest, since interest and principal are upon same footing as to consideration for the security.—Palo Alto Mut. Building & Loan Ass'n v. First Nat. Bank, Cal., 164 Pac. 1124.

79. **Municipal Corporations**—Assessment. — Where commissioners for apportioning metropolitan park district payments had decided that a certain beach included within the district had become a shore resort frequented much more largely by the general public than by the people living within the reservation which included such beach, the court would be unable to say that in levying the assesment for cost and expenses of such reservation according to valuation only the burden was not justly equalized.—In re De Las Casas, Mass., 116 N. E. 222.

80.——Bad Faith.—A bad faith abolition of a municipal position, intended to bring about the discharge of one within the Soldiers' Preference Law, is within the spirit of that law, and prohibited by it.—Babcock v. City of Des Moines, Ia., 162 N. W. 763.

81. **Negligence**—Invitee.—Proprietor of store, inviting customer to inspect shelf goods, without warning of presence of open stairway near by, darkened by piles of merchandise, was liable in damages to customer falling into the stairway.—Reese v. Abeles, Kan., 164 Pac. 1080.

82.——Licensee.—Where plaintiff entered defendants' saloon to use toilet, and after doing so returned to bar room and ordered a drink, and after he was served walked across to examine a picture on opposite wall, and fell into an open and unguarded trapdoor, suffering injuries, though he entered for purpose which would render him a mere licensee, when he fulfilled that purpose and ordered a drink he became a customer, and defendants owed him duty of ordinary care.—Braun v. Vallade, Cal., 164 Pac. 904.

83. **Parent and Child**—Relationship. — The bare relationship of father and daughter does not make the daughter an agent of her father to authorize a bailee to deliver her father's car to his chauffeur on her order.—Doyle v. Peerless Motor Car Co. of New England, Mass., 116 N. E. 257.

84. **Principal and Agent**—Agency.—An agent cannot enter into any transaction with his principal on his own behalf as the subject-matter of the agency, unless he acts with entire good faith, and fully discloses circumstances of transaction.—Sperry v. Sperry, W. Va., 92 S. E. 574.

85.——Estoppel. — Corporation holding note given for a partnership debt by two partners, one of whom was the corporation's general manager, held not estopped by the latter's representation to his co-partner on sale to him of the partnership debts, the corporation having no interest in its manager's personal transaction.—Ortonville Elevator & Milling Co. v. Luff, Minn., 162 N. W. 885.

86.——Evidence.—In suit on a note, testimony that a third party had told defendant that if he would secure the note he would build a house was not sufficient in itself to show that such third party was the duly authorized agent of the plaintiff.—Campbell v. Walker, Ga., 92 S. E. 545.

87. **Principal and Surety**—Departure from Contract.—Where the contractor agreed to construct a building according to specifications furnished him, with the exception that the face should be stone instead of brick, the bondsmen could not escape liability on his bond, which provided that the building should be constructed with a brick front, on the theory that there was a departure from the contract.—Hoosier Brick Co. v. Floyd County Bank, Ind., 116 N. E. 87.

88. **Railroads**—Deed.—A grant to a railroad is not limited to an easement for constructing tracks by a clause in the deed that the land is conveyed "for the construction of a double track of railway."—Killgore v. Cabell County Court, W. Va., 92 S. E. 562.

89.——Injunction.—Owners for whose accommodation a railroad siding is laid in a public street cannot enjoin its removal by the city.—Murdoch v. City of Pittsburgh, Pa., 100 Atl. 869.

90.——Explosions.—A railroad company held not liable for cracking of walls of plaintiff's house from vibrations communicated through foundations for its elevated tracks, where foundations were properly constructed on its own premises and trains were not carelessly operated.—Pennsylvania R. Co. v. Price, U. S. C. C. A., 241 Fed. 250.

91. **Sales**—Delivery.—Under contract providing for delivery of coal in daily installments and for payments by buyer on or before 10th of each month, where, after failure of buyer to make one monthly payment, sellers ceased to make deliveries and notified buyer that contract had been canceled, contract was terminated for all purposes, so far as the sellers were concerned.—Chicago Washed Coal Co. v. Whitsett, Ill., 116 N. E. 115.

92.——Fraudulent Representations.—Purchaser could not escape liability for the price on ground that certain representations were fraudulently omitted from contract, in absence of showing of mistake or that written contract did not constitute real agreement.—Sonneborn v. S. F. Bowser & Co., Ind., 116 N. E. 66.

93.——Implied Warranty.—When an article which the buyer has not seen is sold by description, there is an implied warranty it will conform to the description.—Schaffner v. National Supply Co., W. Va., 92 S. E. 580.

94.——Pleading and Practice.—In suit for goods sold, plea of contract to sell article called "special" knowing it was bought for resale, with misrepresentation that its sale was not prohibited by law, which statement was known to seller and not to buyer to be false, was not demurrable.—Purity Extract & Tonic Co. v. Holmes-Hartsfield Co., Ga., 92 S. E. 548.

95.——Waiver.—Where plaintiff sold a vacuum trap, to be returned within 60 days if it did not work, and purchaser complained of its failure within that time, and plaintiff attempted unsuccessfully to make it work, he waived return, and was not entitled to recover price.—Morehead Mfg. Co, v. Western Straw Products Co., Kan., 164 Pac. 1082.

96.——Waiver.—Notice that defendant would hold plaintiff liable for damages resulting from delay in shipping the machine ordered does not as a matter of law amount to an indefinite waiver of time of performance and a substitution of plaintiff's liability for breach.—General Electric Co. v. Chattanooga Coal & Iron Co., U. S. C. C. A., 241 Fed. 38.

97. **Street Railroad**—Negligence. — Motorman blinded by automobile light held negligent in not reducing speed of car to slowest possible rate or stopping it altogether.—Fosster v. Cumberland County Power & Light Co., Me., 100 Atl. 833.

98. **Sunday**—Contract. — A sales contract made on Sunday will not be enforced against either party, and, after it has been performed, a party who has paid money or delivered property under it cannot recover what he has parted with.—Mann v. United Motor Boston Co., Mass., 116 N. E. 239.

99. **Water and Water Courses**—Police Power. —Pub. Laws 1913, c. 56, requiring the removal of branches and unusued timber cut within 400 feet from a watershed used to supply a municipality with water, held a valid exercise of the police power.—State v. Perley, N. C., 92 S. E. 504.

100.——Statutory Construction.—A dam built by an individual under a special act of the legislature does not become illegal by reason of being transferred to a corporation.—State v. Kansas Flour Mills Co., Kan., 164 Pac. 1170.